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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHELLE DAVIS; NICOLE
JOHNSON, CLAUDIA ARIZA,

Plaintiffs,

v.

CITY OF SAN DIEGO, a municipal
corporation; CHRISTOPHER R. HAYS,

Defendants.

Case No. 14cv1488 DMS (DHB)

**DEFENDANT CITY OF SAN
DIEGO'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT; DEMAND FOR
JURY TRIAL**

Judge: Hon. Dana M. Sabraw
Ctm: 13A
Trial: Not Set

Defendant City of San Diego (hereinafter "Defendant"), answers Plaintiffs Michelle Davis, Nicole Johnson and Claudia Ariza's (hereinafter collectively "Plaintiff") Complaint as follows:

This answering Defendant alleges that Plaintiff's allegation of "at all material times" and similar language is vague and ambiguous in that the allegations are from 1994 to present. Therefore, when the allegation is for "all material times" or similar language, the Defendant's response is limited to November 4, 2012, for Michelle Davis, July 13, 2012, for Nicole Johnson and June 12, 2013, for Claudia Ariza.

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8. This answering Defendant denies the allegations contained in Paragraphs 23 and 24.

9. This answering Defendant admits the SDPD terminated Arevalos' employment pursuant to its investigation of Jane Doe's allegations during a DUI traffic stop on March 9, 2011. This answering Defendant also admits that Arevalos was tried and convicted of crimes by the District Attorney's office. This answering Defendant alleges that the remaining portions of Paragraph 25 contain allegations which present legal conclusions and questions of law to be determined solely by the court, to which no answer is required. To the extent an answer is required, each, all and every allegation contained in said Paragraph 25 is denied. Furthermore, Arevalos' convictions are equally available for review in the Courthouse.

10. This answering Defendant denies the allegations contained in Paragraphs 26 through 32.

11. In response to Paragraph 33, this answering Defendant admits that the San Diego Police Department arrested Hays on February 9, 2014, for felonies and misdemeanors allegedly committed against four victims. This answering Defendant admits that Hays resigned as a police officer from the SDPD on or about February 19, 2014. This answering Defendant admits that Hays pled guilty to one count of false imprisonment and two misdemeanor counts of assault under color of authority and the remaining charges were dismissed. This answering Defendant admits that the District Attorney filed a criminal complaint against Hays in the San Diego Superior Court. This answering Defendant has insufficient information to admit or deny the remaining allegations contained in Paragraph 33 and therefore, denies the same.

FIRST CAUSE OF ACTION

(Violation of Civil Rights, 42 U.S.C. § 1983, by Plaintiff Michelle Davis
against Defendants City of San Diego, Christopher R. Hays)

12. Defendant realleges Paragraphs 1 through 11.

1 13. This answering Defendant denies that the vehicle Plaintiff Davis was
2 in was involved in a collision and was not stopped because it “stalled out.” This
3 answering Defendant has insufficient information to admit or deny the remaining
4 allegations contained in Paragraph 35 and therefore, denies the same.

5 14. This answering Defendant denies the allegations contained in
6 Paragraphs 36 through 37.

7 15. This answering Defendant alleges that Paragraph 38 contains
8 allegations which present legal conclusions and questions of law to be determined
9 solely by the court, to which no answer is required. To the extent an answer is
10 required, each, all and every allegation contained in said Paragraph 38 is denied.

11 16. This answering Defendant denies the allegations contained in
12 Paragraphs 39 through 42.

13 **SECOND CAUSE OF ACTION**

14 (Violation of Civil Rights, 42 U.S.C. § 1983, by Plaintiff Claudia Ariza
15 against Defendants City of San Diego, Christopher R. Hays)

16 17. Defendant realleges Paragraphs 1 through 16.

17 18. This answering Defendant has insufficient information to admit or
18 deny who resided at 3735 College Avenue, San Diego on June 12, 2013 as stated in
19 Paragraph 44 and therefore, denies the same. Defendant admits the remaining
20 allegations in Paragraph 44.

21 19. This answering Defendant denies the allegations contained in
22 Paragraphs 45 through 46.

23 20. This answering Defendant has insufficient information to admit or
24 deny the allegations of Paragraph 47 and therefore, denies the same.

25 21. This answering Defendant alleges that Paragraph 48 contains
26 allegations which present legal conclusions and questions of law to be determined
27 solely by the court, to which no answer is required. To the extent an answer is
28 required, each, all and every allegation contained in said Paragraph 48 is denied.

22. This answering Defendant denies the allegations contained in Paragraphs 49 through 52.

THIRD CAUSE OF ACTION

(Violation of Civil Rights, 42 U.S.C. § 1983, by Plaintiff Nicole Johnson against Defendants City of San Diego, Christopher R. Hays)

23. Defendant realleges Paragraphs 1 through 22.

24. This answering Defendant admits that Defendant Hays stopped Nicole Johnson on July 13, 2012 for a non-functioning tail light that lasted 18 minutes or less. This answering Defendant denies the remaining allegations of Paragraph 54.

25. This answering Defendant alleges that Paragraph 55 contains allegations which present legal conclusions and questions of law to be determined solely by the court, to which no answer is required. To the extent an answer is required, each, all and every allegation contained in said Paragraph 55 is denied.

26. This answering Defendant denies the allegations contained in Paragraphs 56 through 59.

FOURTH CAUSE OF ACTION

(Violation of Civil Rights, 42 U.S.C. § 3789d, by All Plaintiffs against Defendant City of San Diego)

27. Defendant realleges Paragraphs 1 through 26.

28. This answering Defendant has insufficient information to admit or deny the allegations contained in Paragraph 61 and therefore, especially because it is vague as to time and therefore denies the same.

29. This answering Defendant denies the allegations contained in Paragraph 62.

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1 **VIII**

2 Defendant City of San Diego, its agents and employees, and the Defendant
3 police officers are not liable while acting within the scope of their duties for injuries
4 resulting from judicial or administrative proceedings.

5 **IX**

6 Defendant City of San Diego, its agents and employees, and the Defendant
7 police officers are not liable for the execution or enforcement of the California
8 Penal Code where due care is exercised.

9 **X**

10 Defendant City of San Diego, its agents and employees, and the Defendant
11 police officers are not liable for violation of the Plaintiffs' civil rights in that the
12 alleged wrongful acts were not under color of any statute, ordinance, regulation,
13 custom or usage of the City of San Diego.

14 **XI**

15 At the time of the contact, the Defendant police officers attempted to
16 persuade the Plaintiffs to follow directions and in doing so, only used force
17 necessary for the occasion.

18 **XII**

19 Plaintiffs were negligent in and about the matters alleged in the First
20 Amended Complaint and said carelessness on their part proximately contributed to
21 the happening of the alleged incident, their injuries and damages complained of, if
22 any such exist.

23 **XIII**

24 At the time of the initial contact, the Defendant police officers were acting
25 within the scope of their employment and had probable cause to believe the
26 Plaintiffs were engaging in, or had just engaged in, a prohibited activity. During
27 the contact, the Defendant police officers were acting within the scope of their

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1 employment and had probable cause to believe that said Plaintiffs had committed a
2 crime.

3 **XIV**

4 Plaintiffs do not have standing to seek relief for each and every cause of
5 action as set forth in the First Amended Complaint.

6 **XV**

7 The injuries and damages, if any, were the result of the exercise of the
8 discretion vested in the public entity/defendants and each of them, and/or the
9 officers, agents and/or employees of the public entity, and there is no liability
10 therefore, including pursuant to the California Code, including the California
11 Government Code, including sections 815.2(b) and 820.2.

12 **XVI**

13 This answering Defendant and/or a public employee is not liable for their
14 acts or omissions, while exercising due care, in the execution or enforcement of any
15 law, including pursuant to a California or federal code or law, including pursuant to
16 the California Government Code, including sections 820.4 and/or 815.2.

17 **XVII**

18 This answering Defendant and/or public employee is not liable for an injury
19 caused by the act or omission of another person, including pursuant to the
20 California Government Code, including section 820.8.

21 **XVIII**

22 This answering Defendant and/or a public employee is not liable for
23 Plaintiffs' own acts and conduct caused the underlying events at issues in the First
24 Amended Complaint to occur, and but for the acts of the Plaintiffs, the events
25 alleged in the First Amended Complaint would not have occurred, and/or Plaintiffs
26 would not have been involved or engaged or otherwise subject to the matters
27 alleged in Plaintiffs' First Amended Complaint, including any citation, detention,
28 apprehension, arrest, or control or force, if any, or otherwise having sustained the

1 matters alleged, including any and all injuries, inconvenience and damages alleged
2 in the First Amended Complaint.

3 **XIX**

4 The First Amended Complaint and/or certain counts, claims and/or causes of
5 action therein is/are barred by operation of law, including the applicable statute of
6 limitations for the claims, causes of action or counts, and/or applicable claims
7 presentation requirements for each, any and/or the causes, counts or claims under
8 California law, including but not limited to the following: that Plaintiffs failed to
9 timely file their causes, counts or claims and/or First Amended Complaint as
10 against certain Defendants and/or that Plaintiffs failed to comply with the claims
11 presentation requirements, and/or late claims presentation requirements set forth in
12 Government Code section 901, et seq., California Code of Civil Procedure section
13 335.1 et al. and as to Plaintiffs' claims concerning the individual defendant's
14 instances of conduct, and the alleged *Monell* violation by the City of San Diego.

15 **XX**

16 As to the acts allegedly undertaken by the individual Defendants, and each of
17 them, each and all of the said individuals, the individual Defendants are shielded
18 from liability pursuant to the doctrine of qualified immunity. At all times, the
19 conduct of the individual Defendants was reasonable, lawful, based on probable
20 cause and within the scope of their official duties and employment.

21 **XXI**

22 Plaintiffs failed to exhaust their administrative remedies, including judicial
23 remedies, prior to bringing suit.

24 **XXII**

25 This answering Defendant reserves the right to a jury trial.

26 **XXIII**

27 This answering Defendant reserves the right to allege and do affirmatively
28 allege and state the avoidance and affirmative defenses set forth in Rule 8 as if fully

1 set forth herein, and particularly including assumption of risk, contributory
2 negligence, negligence, estoppel, laches, res judicata, statute of limitations and
3 waiver.

4 **XXIV**

5 A reservation of right is made to allow amendment of the answer, to change
6 or add an answer and/or affirmative defense.

7 **JURY DEMAND**

8 Defendant respectfully demands a trial by jury in this action pursuant to
9 Federal Rules of Civil Procedure, Rule 38(d).

10 **REQUEST FOR RELIEF**

11 WHEREFORE, this answering Defendant prays for judgment as follows:

- 12 1. Plaintiffs take nothing by their Amended Complaint;
13 2. Defendant receives its costs of suit incurred herein; and
14 3. Such other relief as the court deems just and proper.

15 Dated: December 26, 2014 JAN I. GOLDSMITH, City Attorney

17 By /s/ KEITH W. PHILLIPS
18 Keith W. Phillips
19 Deputy City Attorney
KPhillips@sandiego.gov

20 Attorneys for Defendant
City of San Diego